

FILED

08 MAR 20 PM 12:17

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ms

DEPUTY

1 Chad McKinney
2 Pro Se
3 6266 Madeline St Apt #61
4 San Diego, CA 92115
5 619-634-3566

THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

6 CHAD MCKINNEY, an individual,

10 Plaintiff,

14 v.

16 APOLLO GROUP INC., UNIVERSITY OF
17 PHOENIX, a Corporation, MECHELLE
18 BONILLA, an Enrollment Manager at
19 UNIVERSITY OF PHOENIX, KYAN
20 FLYNN, Director of Enrollment at
21 UNIVERSITY OF PHOENIX, APRIL
22 ALCORN, an Employee Relations
23 Consultant at UNIVERSITY OF PHOENIX
24 CARLYN LINDSTEN, Associate Director of
Enrollment at UNIVERSITY OF PHOENIX

Defendants

) CIV. Case No.07-cv-2373
)
) FOR VIOLATION OF FEDERAL
) FALSE CLAIMS ACT AND FOR
) VIOLATION OF THE
) THE CIVIL RIGHTS ACT 1964 AND
) THE AMENDMENTS TO TITLE
) VII OF THE CIVIL RIGHTS ACT OF
) 1991

) RETALIATION- WRONGFUL
) TERMINATION &
) EMPLOYMENT DISCRIMINATION
) CIVIL ACTION

) Memorandum of Points and
) Authorities in Support of Plaintiff's
) Motion for Clerk's Entry of Default

) Demand for Trial By Jury Pursuant
) to U.S. Constitution, 7th Amendment

) March 20, 2008

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR CLERK'S ENTRY OF DEFAULT**

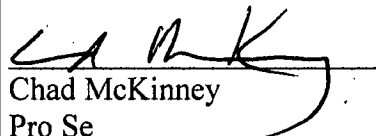
Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, and any other relevant Federal Rule of Civil Procedure pertaining to this case, plaintiff Chad McKinney, Pro Se, respectfully moves the Court to enter a default against the defendant University of Phoenix, in the amount of \$250,000 since the Defendant has failed to plead or otherwise defend themselves against the plaintiff's original complaint within the timeframe required by the Federal Rules of Civil procedure. The Complaint was originally filed with the Court on December 19th 2007 and entered December 20th. The defendant was served on January 31st, 2008. (Please see copy of Return of Service).

In support of this motion, the Plaintiff states with supporting evidence:

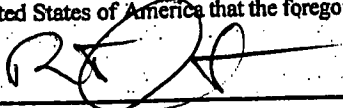
1. This complaint was filed on December 19, 2007
2. This complaint was served on January 31, 2008
3. As of the 18th of March 2008, the Defendant is late 48 days.
4. The plaintiff's complaint requests punitive damages of \$250,000, so a default judgment in this amount should be deemed reasonable.
5. Said defendant is not an infant or incompetent, but a large corporation who was given ample time to respond within the timeframe required by the Federal Rules of Civil Procedure. No extra time was requested by the defendant nor granted by the Court.

1 WHEREFORE, the Plaintiff respectfully request that this Court issue and Order a Default
2 against the Defendant in the amount of \$250,000 to reasonably cover the damages
3 incurred by the plaintiff.
4

5 Respectfully submitted,

6 
7 Chad McKinney
Pro Se

8 6266 Madeline St Apt #61
9 San Diego, CA 92115
619-634-3566
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RETURN OF SERVICE			
Service of the Summons and Complaint was made by me		DATE <u>1/31/08</u>	
NAME OF SERVER <u>R.T. Hansell</u>		TITLE <u>R.P.S.</u>	
Check one box below to indicate appropriate method of service			
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____			
<input type="checkbox"/> Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein:			
Name of person with whom the summons and complaint were left: _____			
<input type="checkbox"/> Return unexecuted:			
<input checked="" type="checkbox"/> Other (specify): <u>Served University of Phoenix by leaving copies with Ellen Bowens (Administration).</u>			
STATEMENT OF SERVICE FEES			
TRAVEL		SERVICES	TOTAL \$ <u>25</u>
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.			
Executed on: <u>2/12/08</u>		 Signature of Server	
Date		<u>2445 Morena Blvd, Ste 206</u> Address of Server <u>S.D. Ca 92110</u>	
NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE			
IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. <u>COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.</u>			
YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.			
JUDGEMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.			

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

AO 440 (Rev. 10/93) Summons in a Civil Action

UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

District of California

Chad McKinney, Pro Se

SUMMONS IN A CIVIL CASE

V.

APOLLO GROUP INC., UNIVERSITY OF PHOENIX, a Corporation, MECHELLE BONILLA, an
Enrollment Manager at UNIVERSITY OF PHOENIX, KYAN FLYNN, Director of Enrollment at
UNIVERSITY OF PHOENIX, APRIL ALCORN, an Employee Relations Consultant at UNIVERSITY OF
PHOENIX, CARLYN LINDSTEN, Associate Director of Enrollment at UNIVERSITY OF PHOENIX

CASE NUMBER:

07 CV 2373 WQH CAB

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se
6266 Madeline Street Apt. No. 61
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

W. SAMUEL HAMRICK, JR.

JAN 15 2008

CLERK

DATE

(By) DEPUTY CLERK

1 Chad McKinney
2 Pro Se
3 6266 Madeline St Apt #61
4 San Diego, CA 92115
5 619-634-3566

6 **THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA**

7 **March 20, 2008**

8 **BY HAND DELIVERY**

9 The Honorable Judge William Q. Hayes
10 Referred to: Magistrate Judge Cathy Ann Bencivengo
11 330 West Broadway, San Diego
12 CA 92101-3827

13 Re: McKinney v. Apollo Group Inc., *et al*
14 Civil Action 07-cv-2373

15 Dear Judge Hayes,

16 Enclosed is a courtesy copy of the Plaintiff's Motion for Clerk's Entry of Default and appendices that
17 was hand delivered with the Clerk today.

18 Respectfully,

19 
20 Chad McKinney, Pro Se

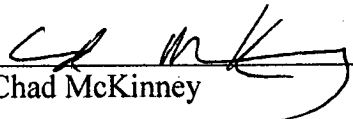
21 Cc: University of Phoenix
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23
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CERTIFICATE OF SERVICE

I, Chad McKinney, hereby certify that on, March 20, 2008, I served copies of the
motion for clerk's entry of default the following parties by way of United
States Postal Service First Class Mail:

University of Phoenix
Attention of: Kim Savich
3890 Murphy Canyon Road
San Diego, CA 92123c

3/20/2008
Date


Chad McKinney

The United States District Court Southern District of California